

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AXELROD & CHERVENY ARCHITECTS,
P.C.,

Plaintiff(s),

ORDER

CV 04-5729 (TCP) (WDW)

-against-

RON KING CORP., et al.,

Defendant(s).

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WALL, Magistrate Judge:

Before the court is plaintiff's letter application dated September 28, 2005 seeking an order compelling responses to outstanding discovery demands or, in the alternative, striking defendants' answer. No opposition has been received. Plaintiff's motion to compel is granted, both on the merits and as unopposed.

Plaintiff served document demands and interrogatories on February 28, 2005 and June 30, 2005, respectively. Plaintiff's counsel details his significant good faith efforts to secure defendants' compliance before making this motion. Despite those efforts, defendants have failed to respond, and have further failed to respond to this motion.

Defendants shall comply with all outstanding discovery by **October 31, 2005**. If defendants fail to comply, plaintiff may renew its motion for an order striking defendants' answer. Furthermore, defendants have waived any objections to the outstanding discovery demands. Federal Rule 33(b)(4) provides that any ground for objection "not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown." The defendants have shown no cause at all for their failure to respond to the demands in a timely fashion. "It is well settled that a failure to assert objections to a discovery request in a timely manner operates as a waiver." *Eldaghar v. City of New York Dep't of Citywide Admin. Svces*, 2003 LEXIS 19247 *2 (S.D.N.Y. Oct. 20, 2003). In cases where, as here, no good cause has been shown for the late responses, a finding of waiver is appropriate. "Any other result would ignore the time limits set forth in the Federal rules of Civil Procedure, contribute further to the delay in resolving cases, and transform Article V of the Federal Rules of Civil Procedure from a structure of well-defined rights and obligations to a system of suggested, but non-binding, guidelines." *Id.* at * 3-4. Thus, any objections defendants may have had to the demands have been waived.

Finally, plaintiff is awarded \$200 as reasonable costs, including attorneys' fees, pursuant to Federal Rule 37(a)(4)(A), the defendants having made no showing of substantial justification for their failure to timely respond to the discovery demands.

Dated: Central Islip, New York
October 20, 2005

SO ORDERED:

/s/ William D. Wall
WILLIAM D. WALL
United States Magistrate Judge